

ADMINISTRATIVE/INTERNAL USE ONLY

OCA 88-3372  
7 October 1988

OCA FILE

MEMORANDUM FOR THE RECORD

SUBJECT: Office of Federal Procurement Policy Act Amendments  
of 1988, H.R. 3345 and S. 2215

1. Today, I was informed that OL had concerns on section 26(f)(2) of subject bills (attached). According to attorneys in the Procurement Management Staff passage could cause the Agency to reveal sensitive contract information.

2. I contacted the staff of the Senate Governmental Affairs Committee and discovered the House and Senate differences were to be worked out informally today. They advised that if the Agency wanted changes they would need language immediately.

3. Subsequent conversations with [ ] Executive Procurement Officer, revealed that the provision was not damaging to Agency interests. [ ] advised that the Agency had always complied with the standards defined in section 26(f)(2). Based on this guidance, I took no further action with the Governmental Affairs Committee.

cc: DDA  
D/OL  
Procurement Exec./OL  
C/PMS  
D/OCA  
OCA/LEG-- [ ]

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(including inereof) promulgated by the Cost Accounting Standards Board under section 25 of this Act; or

"(1) to exempt a regulation issued by an executive agency under the authority of subparagraph (A) of this paragraph from section 6(f) of this Act.

"(d) Subject to the authority, direction, and control of the head of the agency concerned, each official who represents an agency on the Council pursuant to subsection (b) shall—

"(1) approve or disapprove all regulations that are, after the date of enactment of this section, proposed for public comment, promulgated in final form, or otherwise made effective by such agency relating to procurement before such regulation may be proposed for public comment, promulgated in final form, or otherwise made effective;

"(2) carry out the responsibilities of such agency set forth in chapter 35 of title 44, United States Code, for each information collection request (as that term is defined in section 3502(11) of title 44, United States Code) that relates to procurement; and

"(3) eliminate or reduce (A) any redundant or unnecessary levels of review and approval, in the procurement system of such agency, and (B) redundant or unnecessary procurement regulations which are unique to that agency.

"(e) All actions of the Council and of members of the Council shall be in accordance with and furtherance of the policies of section 2 and the policies prescribed under section 6(a) of this Act.

"(f) Subject to section 6(b), the Council shall manage, direct, coordinate, control, and monitor the maintenance of, and issuance of changes in, the Federal Acquisition Regulation.

"(g) The Administrator for Federal Procurement Policy shall—

"(1) publish a report within 6 months after the date of enactment of this section and every 6 months thereafter relating to the development of procurement regulations by the Council and, to the extent appropriate, by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration;

"(2) include in each report published under paragraph (1)—

"(A) the status of each such regulation;

"(B) a description of those regulations which are required by statute;

"(C) a description of the methods by which public comment was sought with regard to each proposed regulation in accordance with section 22 of this Act, and to the extent appropriate, sections 3504(h) and 3507 of title 44, United States Code;

"(D) regulatory activities completed and initiated since the last report;

"(E) regulations, policies, procedures, practices, and forms that are under consideration or review by the Office of Federal Procurement Policy;

"(F) whether the regulations have paperwork requirements;

"(G) the progress made in promulgating and implementing the Federal Acquisition Regulation; and

"(H) such other matters as the Administrator determines would be useful; and

"(3) report to Congress within 180 days after the date of the enactment of this section, in consultation with the Administrator of the Office of Information and Regulatory Affairs, regarding—

"(A) the extent of the paperwork burden created by the Federal procurement process, and

"(B) the extent to which the Federal procurement system can be streamlined to reduce unnecessary paperwork while at the

reporting requirements necessary to ensure the integrity and accountability of the system."

#### SEC. 5. COST ACCOUNTING STANDARDS BOARD.

The Office of Federal Procurement Policy Act is further amended by adding at the end thereof the following:

#### "COST ACCOUNTING STANDARDS BOARD

"SEC. 26. (a)(1) There is established within the Office of Federal Procurement Policy an independent board to be known as the 'Cost Accounting Standards Board' (hereinafter referred to as the 'Board'). The Board shall consist of 7 members, including the Administrator, who shall serve as Chairman, and 6 members, all of whom shall have experience in Government contract cost accounting, and who shall be appointed as follows:

"(A) two representatives of the Federal Government—

"(i) one of whom shall be a representative of the Department of Defense and be appointed by the Secretary of Defense; and

"(ii) one of whom shall be a representative of civilian agencies and be appointed by the head of a civilian agency designated by the Administrator;

"(B) two representatives of industry, each of whom shall be appointed by the Administrator, and one of whom shall have substantial experience and knowledge of problems of small businesses;

"(C) two individuals from the private sector, each of whom shall be appointed by the Administrator and shall have substantial accounting experience and—

"(i) one of whom shall be a member of an academic institution; and

"(ii) neither of whom is employed by, or affiliated with (I) a Government contractor, or (II) any accounting, legal, consultant, or other professional services firm, a substantial part of whose business is providing services to any Government contractor or contractors with respect to Government procurement.

"(2)(A) The term of office of each of the members of the Board, other than the Administrator for Federal Procurement Policy, shall be 4 years, except that—

"(i) of the initial members, two shall be appointed for terms of two years, two shall be appointed for terms of three years, and two shall be appointed for terms of four years;

"(ii) any member appointed to fill a vacancy in the Board shall serve for the remainder of the term for which his predecessor was appointed; and

"(iii) no individual who is appointed under paragraph (1)(A) of this subsection shall continue to serve after ceasing to be an officer or employee of the Government.

"(B) A vacancy on the Board shall be filled in the same manner in which the original appointment was made.

"(C) The initial members of the Board shall be appointed within 90 days after the date of enactment of this section.

"(b) The Administrator, after consultation with the Board, may appoint an executive secretary and two additional staff members without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may pay such employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

"(c) The Administrator may appoint, fix the compensation, and remove additional employees of the Board under the applicable provisions of title 5, United States Code.

"(d)(1) The

agency (with the agency concerned) to milites and task forces in carrying out the functions of the Board under this section.

"(2) The Administrator, after consultation with the Board, may procure temporary intermittent services under section 3109(b) of title 5, United States Code, of personnel for the purpose of serving on advisory committees and task forces to assist the Board in carrying out the functions and responsibilities of the Board under this section.

"(e) Except as otherwise provided in subsection (a), the members of the Board who are officers or employees of the Federal Government, and officers and employees of other agencies of the Federal Government who are used under subsection (d)(1), shall receive no additional compensation for services, but shall continue to be compensated by the employing Department or agency of such officer or employee. Each member of the Board appointed from private life shall receive compensation at a rate not to exceed the daily equivalent of the rate prescribed for level IV of the Executive Schedule for each day (including travel time) in which the Member is engaged in the actual performance of duties vested in the Board. Individuals hired under subsection (d)(2) may receive compensation at rates fixed by the Administrator, but not to exceed the daily equivalent of the rate prescribed for level V of the Federal Executive Salary Schedule under section 5316 of title 5, United States Code, for each day (including travel time) in which such appointees are properly engaged in the actual performance of duties under this section. While serving away from homes or the regular place of business, Board members and other appointees serving on an intermittent basis under this section shall be allowed travel expenses in accordance with section 5703 of title 5, United States Code.

"(f)(1) The Board shall have the exclusive authority to make, promulgate, amend, and rescind cost accounting standards and interpretations thereof designed to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the United States.

"(2) Cost accounting standards promulgated under this section shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States in excess of \$100,000, other than contracts or subcontracts where the price negotiated is based on (A) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (B) prices set by law or regulation.

"(3) No regulation of an executive agency may be inconsistent with a cost accounting standard promulgated or amended under this section. Costs which are the subject of cost accounting standards promulgated by the Board shall not be subject to regulations established by any executive agency that differ from such standards, by being either inconsistent or more or less restrictive. In any case in which any such regulation established by an executive agency is determined to differ from cost accounting standards promulgated by the Board, contracts and subcontracts subject to the conflicting regulations shall be controlled only by the